

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES and STATE OF NEW YORK :
ex rel. XIOMARY ORTIZ and JOSEPH GASTON, :

Plaintiffs, :

v. :

MOUNT SINAI HOSPITAL, MOUNT SINAI :
SCHOOL OF MEDICINE, and MOUNT SINAI :
RADIOLOGY ASSOCIATES. :

Defendants. X

USDC SDNY
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13 Civ. 4735 (RMB)

STIPULATION AND ORDER OF
SETTLEMENT BETWEEN THE
STATE OF NEW YORK AND
RELATORS

WHEREAS, this Stipulation and Order of Settlement and Release (the "Relators Settlement Stipulation") is entered into between the State of New York, acting through the New York State Office of the Attorney General, Medicaid Fraud Control Unit ("MFCU") (collectively, the "State"), and relators Xiomary Ortiz and Joseph Gaston ("Relators"), through their authorized representatives (collectively the "Parties");

WHEREAS, on or about July 9, 2013, Relators filed an action in the United States District Court for the Southern District of New York, captioned *United States and State of New York ex rel. Xiomary Ortiz and Joseph Gaston v. Mount Sinai Hospital, Mount Sinai School of Medicine, and Mount Sinai Radiology Associates*, 13 Civ. 4735 (RMB), pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) ("FCA") and the New York State False Claims Act ("NY FCA"), N.Y. State Fin. Law §189 *et seq.*;

WHEREAS, on or about March 5, 2014, the State and the United States filed joint Notice of Declination, setting forth their intention to decline to intervene in the action;

WHEREAS, on January 3, 2018, Relators and defendants Mount Sinai Hospital, Mount Sinai School of Medicine, and Mount Sinai Radiology Associates ("Defendants") entered into a settlement agreement resolving Relators' claims in this action (the "Settlement Agreement"), which provided for, among other things, a payment by Defendants to the State in the amount of \$600,000.00 (the "State Settlement Amount");

WHEREAS, on or about January 12, 2018, Defendants paid the Settlement Amount to the State.

WHEREAS, Relators have asserted that, pursuant to NY State Fin. Law § 190 (6) (b), they are entitled to receive a portion of the Settlement Amount paid to the State (the "Relators' Claim"); and

WHEREAS, the Parties hereto mutually desire to reach a full and final compromise of the Relators' Claim against the State for a portion of the Settlement Amount, pursuant to the terms set forth below,

NOW, THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants, and obligations in this Relators Settlement Stipulation, and for good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

1. The State will pay to Relators 30% of the State Settlement Amount, for a total of \$180,000.00 (the "Relators' Share"). The State shall pay the Relators' Share to Relators by check payable to and delivered to Relators' counsel, Timothy J. McInnis, no later than twenty-one (21) days after the State has received payment of the State Settlement Amount. Nothing in this Stipulation shall preclude Relators and their Counsel from seeking to recover expenses, attorneys'

fees and costs pursuant to N.Y. State Fin. Law § 190 (6)(b) from the Defendants. The Relators will not seek to recover any payment from the State for expenses, attorneys' fees and costs.

2. Relators and their heirs, successors, attorneys, agents, and assigns shall not object to this Stipulation but agree and confirm that this Stipulation is fair, adequate, and reasonable under all the circumstances pursuant to N.Y. State Fin. Law § 190(5)(b)(ii).

3. In agreeing to accept payment of the Relators' Share and upon payment thereof, Relators, for themselves and their heirs, successors, attorneys, agents and assigns, release and are deemed to have released and forever discharged the State, and its agencies, officers, employees, servants, and agents, from any claims pursuant to NY State Fin. Law §190 for a share of the Settlement Amount, and from any and all claims against the State, and its agencies, officers, employees, servants, and agents, arising from or relating to the allegations in the Relators' Complaint or Amended Complaint, the State's investigation or this Stipulation.

4. This Relators Settlement Stipulation does not resolve or in any manner affect any claims the State has or may have against Relators arising under the state revenue codes, or any claims arising under this Relators Settlement Stipulation.

5. This Relators Settlement Stipulation shall inure to the benefit of and be binding on only the Parties, their successors-in-interest, assigns, transferees, and heirs.

6. Each of the Parties represents that he or she has the full power and authority to enter into this Relators Settlement Stipulation.

7. This Relators Settlement Stipulation shall become final, binding, and effective only upon entry by the Court.

8. This Relators Settlement Stipulation shall be governed by the laws of the State of New York. The State and Relators agree that the exclusive jurisdiction and venue for any

dispute arising under this Stipulation shall be the United States District Court for the Southern District of New York.

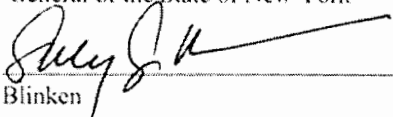
9. This Relators Settlement Stipulation constitutes the entire agreement of the State and Relators with respect to the subject matter of this Relators Settlement Stipulation and may not be changed, altered, or modified, except by a written agreement signed by the State and Relators specifically referring to this Relators Settlement Stipulation.

10. This Relators Settlement Stipulation is effective on the date that it is entered by the Court.

11. This Relators Settlement Stipulation may be executed in counterparts, each of which shall constitute an original and all of which shall constitute the same agreement.

Dated: New York, ~~New York~~
February 5, 2018

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

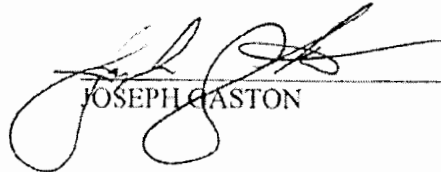
BY: 
Sally G. Blinken
Special Assistant Attorney General
Medicaid Fraud Control Unit

Relator


Xiomary ORTIZ

Dated: New York, New York
February 3, 2018

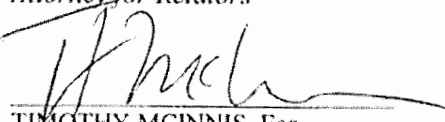
Relator


JOSEPH GASTON

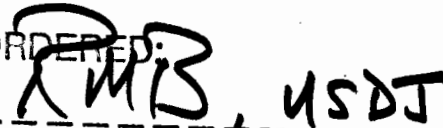
Dated: New York, New York
February 3, 2018

Attorney for Relators

By:


TIMOTHY MCINNIS, Esq.
McInnis Law
521 Fifth Avenue, 17th Floor
Bronx, New York 10451
(212) 292-4573

SO ORDERED:


RICHARD M. BERMAN U.S.D.J.

2/28/18